

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SECOND DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE V.ESWARAIAH

-

WRIT PETITION NO : 13364 of 2004

Between:

Kesoram Industries Ltd. Birla Tyres, Vice President (commercial),
rep. by its Manager (Commercial), Shivam Chambers, 53, Syed Amir Ali
Avenue, Kolkata

..... PETITIONER

AND

- 1 The Authority under Section 50 of the A.P.Shops and Establishments Act 1988
and Assistant Commissioner of Labour, Kurnool
- 2 The Authority under Section 50 of the A.P.Shops and Establishments Act 1988
and Labour Officer, Kurnool
- 3 B.Ramchandrar, S/o B.C.Chandraiah,R/o Plot No.3, Vasavinagar, Bellary Road,
Near Radio Station Road, Kurnool

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the
circumstances stated in the Affidavit filed herein the High Court will be pleased to
call for the records from the 1st respondent and issue an appropriate Writ, Order or
Direction, particularly one in the nature of Writ of Mandamus, declaring that the
Docket Order passed by the 1st respondent in reference No.B/597/03, dated 5-6-
2003, in refusing to entertain the Appeal under Section 53 of the A.P. Shops and
Establishments Act 1988 as illegal, unjust, contrary to law, arbitrary and without
jurisdiction, and pass such other order or orders as deemed fit and proper under the
circumstances of the case

Counsel for the Petitioner: MR.A.K.JAYAPRAKASH RAO

Counsel for the Respondent No.12: GP FOR LABOUR

Counsel for the Respondent No. 3 : Mr V.M.V.R.R.Swamy

The Court made the following :

ORDER:

The third respondent filed an application before the second respondent who is the Authority under Section 50 of the A.P. Shops and Establishments Act 1988 (for short 'the Act') claiming wages from 1-9-2000 to 31-3-2002 for a sum of Rs.91,295/-. Though the matter was contested by the writ petitioner contending that the respondent was an exempted employee under Section 73 of the Act and since he has not worked during the above said period he is not entitled for the wages, the second respondent allowed the application of the third respondent and directed the writ petitioner herein to deposit a sum of Rs.91,295/- towards the wages for the aforesaid period. Aggrieved by the said order, the petitioner filed an appeal before the first respondent herein under Section 53 of the Act. The first respondent- Assistant Commissioner of Labour, who is the Appellate Authority, refused to entertain the appeal on the ground that "since already action taken and filed charge sheet in the appropriate Court, the petition filed cannot be considered" vide his endorsement No. B/597/03, dated 5-6-2003. Questioning the said impugned docket order made by the first respondent dated 5-6-2003 i.e., refusing to entertain the appeal under Section 53 of the Act the present writ petition has been filed.

While admitting the writ petition, this court granted interim stay of all further proceedings in STC No.9 of 2003 on the file of Judicial Magistrate of First Class, Kurnool. Against the order dated 19-2-2003 made in S.A. No. 3 of 2002 on the file of second respondent which was passed under Section 50 of the Act appeal lies before the first respondent under section 53 of the Act. The question of referring the matter for execution to the Magistrate arises only after attaining the finality of the order and therefore merely because the matter was already referred for execution of the order of the 2nd respondent, it cannot constitute a ground to refuse from entertaining the appeal. It is stated that the writ petitioner has already deposited a sum of Rs.50,000/- of wages as directed by the 2nd respondent before the 2nd respondent and as the third respondent succeeded at the first instance, I am of the view that the third respondent is entitled to withdraw half of the amount so deposited by the petitioner pursuant to the order of this Court in WPMP No. 17113 of 2004 , dated 29-7-2004.

Accordingly, the writ petition is allowed setting aside the docket order of the

first respondent dated 5-6-2003 and the first respondent is directed to entertain the appeal filed under section 53 of the Act by the writ petitioner and pass appropriate orders in accordance with law. The third respondent herein is permitted to withdraw half of the amount deposited by the writ petitioner pursuant to the aforesaid interim order pending disposal of the appeal before the first respondent. As long as the appeal is pending before the first respondent, the question of execution of the orders of the 2nd respondent does not arise and therefore the petitioner may file a petition in STC No.9 of 2003 to drop the proceedings in view of this order. No order as to costs.

Dt.2.9.04 V. ESWARAIAH, J

Kvrk

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday the Second day of September Two thousand and four.

Sd/-

Registrar

To

1 The Authority under Section 50 of the A.P.Shops and Establishments Act 1988 and Assistant Commissioner of Labour, Kurnool

2 The Authority under Section 50 of the A.P.Shops and Establishments Act 1988 and Labour Officer, Kurnool

3, Two copies to G.P.for Labour, High Court Buildings, Hyd. (OUT)

4. Two CD copies.

